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SMALL CAUSE JURISDICTION AND MADRAS ACT XVI OF 1951

By

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My note on the validity or otherwise of the increase in small cause jurisdiction beyond Rs. 1,000 appearing in (1955) 2 M.L.J. 20 (J) has been followed up by comments from five learned friends of the profession published at pages 26, 27, 38, 44 and 52.

Sri M. Narayana Rao of Rajahmundry (at page 38) agrees with my view that the increase is not valid.

Sri A. S. Kuppuswamy Iyer (at page 26) would justify the increase on the ground of competency of the State Legislature and Sri K. V. Venkataseshadri (at page 52) would support the increase under Articles 372 and 246 (3) of our Constitution that the Central Act stands automatically amended by the Madras Act. But the question is whether the Madras Act has really amended section 15 of the Provincial Small Cause Courts Act and increased the pecuniary jurisdiction?

Sri S. Vaidyanathan (at page 27) admits that the Madras Act is plainly repugnant to the Central Provincial Small Cause Courts Act of 1887 and Sri M. Krishnamachari (at page 44) concedes that section 15 applies to Small Cause Courts established under section 4 and any increase beyond Rs. 1,000 is not valid.

However Sri S. Vaidyanathan would justify the increase on the grounds that the Madras Act being later prevails over the earlier Central Act and section 15 (2) is subject to the provisions of any enactment for the time being in force. The first ground is on the legislative competency and the second can govern only the nature of the suit and not its pecuniary jurisdiction. Section 15 (2) is as follows :

"Subject to the exceptions specified in the schedule II and to the provisions of any other enactment for the time being in force, all suits of a civil nature of which the value does not exceed Rs. 500 shall be cognisable by a Court of Small Causes."

Sri M. Krishnamachari contends that section 28 of the Madras Civil Courts Act is independent of section 15 (2) of the Provincial Small Cause Courts Act and Small Cause Courts under section 32 of the Central Act come within the purview of section 28 of the Madras Civil Courts Act. On his own showing that a Judge must be invested with small cause powers before he could exercise it and a mere

mention of the pecuniary jurisdiction will not be sufficient by citing the example that all District Munsifs were not exercising small cause jurisdiction upto Rs. 500 inspite of section 15 (2), the distinction that he seeks to draw between whole time Small Cause Courts and part time Small Cause Courts under section 32 is not, with respect, correct because under section 33 of the Provincial Small Cause Courts Act the Court invested with small cause jurisdiction and the same Court with respect to the exercise of its jurisdiction in other suits of a civil nature shall for the purpose of the Act and Civil Procedure Code be deemed to be different Courts. A Small Cause Judge whether full time or part time is a different Court and can be appointed only under the Small Cause Courts Act and not under the Madras Civil Courts Act.

The Central Legislature has provided for the establishment of Courts of Small Causes to try simple money suits of a civil nature and by section 15 of the Act, has conferred an exclusive and residuary jurisdiction on such Courts. Any money suit below Rs. 500 and not excepted under schedule II or of any other enactment for the time being in force shall be cognisable by the Court of Small Causes established under sections 4, 5 or 32. The pecuniary jurisdiction is limited under this Act but any exclusion of the nature of the suits is permitted to be made by any other enactment. The pecuniary jurisdiction can be altered only by amending section 15 and not by any other Act.

My point is that the existence of a jurisdiction is different from the exercise of it and while the existence of a jurisdiction is a condition precedent for the exercise of it, the jurisdiction cannot be exercised beyond the limit prescribed. Section 15 of the Act confers jurisdiction and section 28 of the Madras Civil Courts Act empowers the High Court to invest some Judges or Courts with the jurisdiction of a Judge of a Court of Small Causes. The High Court may invest any District Judge or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes upto Rs. 2,000 and any District Munsif upto Rs. 500. Section 28 of the Madras Civil Courts Act does not by itself confer small cause jurisdiction; but it only deals with the manner of its being exercised by some Judges on being so empowered by the High Court upto a limit and this limit cannot exceed the maximum prescribed under section 15. The difference in language between section 12 of the Madras Civil Courts Act conferring ordinary jurisdiction and the said section 28 may be noted. Such Judges appointed under section 28 become Small Cause Judges under section 32 and 33 of the Small Cause Courts Act.

The matter can be remedied by amending section 15 of the Provincial Small Cause Courts Act by subtituting Rs. 2,000 for Rs. 500 by the State Le islature if it is otherwise competent to do so.

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THE LATE SRI B. SOMAYYA.

It is with deep regret that we have to record the passing away of Sri B. Somayya after a short illness last week at his residence in New Delhi. He was a former Judge of the Madras High Court and since his retirement in 1946 he had been practising as a Senior Advocate in the Federal Court of India and its successor, the Supreme Court. He was active in spite of indifferent health, till the last. Soon after his retirement his services were availed of by the Central Government and he was appointed as a member of the Calcutta Disturbances Enquiry Commission. Recently the Andhra State made him a Trustee of the Tirupathi Devasthanam. Homeopathy claimed his attention and interest and he did much to popularise it in South India by the establishment of a Homeopathic College.

He had a brilliant academic career and won the Bhashyam Ayyangar Gold Medal for Hindu Law. Enrolled as a member of the Madras Bar in 1912 he soon built up a varied and successful practice. Recognition of his abilities was not slow to come and in 1939 he was elevated to the Bench of the Madras High Court and occupied the office with conspicuous ability and distinction till his retirement in 1946.

References were made in the Supreme Court and in the Madras High Court touching the death of Sri Somayya. An emergent meeting of the Bar Association of the Supreme Court was convened to condole the death of Sri Somayya. A meeting of the Madras Advocates' Association passed a resolution placing on record the sense of loss sustained by the bar in Sri Somayya's death.

Our heartfelt condolences go to the members of the bereaved family.

SRI B. SOMAYYA, MY MASTER

By

SRI S. VARADARAJULU NAIDU

District Magistrate (J.)

While some eminent men were born with silver spoons in their mouths, Sri Somayya was born with the spoon of human kindness, and he freely used it in manifold ways to help all those that came to him for succour of one kind or other. Supremely modest, he did not allow his left hand to know, what his right hand did in this respect. But this could not always be kept up, as, for instance, when he made an endowment to his home town, Kuppam, by causing the elevation of the Secondary School there into a High School. Later he served the Telugus of Madras, by inspiring Doctor Kesari, in collaboration with like-minded friends,

to open the first Telugu High School in Mylapore. His home town was ever in his mind, and he foresaw that its salubrious climate would make it fit to be a first class sanatorium in the Andhra Desa, if properly moulded. May the new colony that is fast springing up there, be honoured by being named "SRI SOMAYYA NAGAR".

Stepping into his office for the first time in the Summer of 1927 to be one of his apprentices-at-law, I and my co-apprentice were rudely shaken by our discovery that we ran the risk of failing to obtain his certificate for our enrolment, if we had continued to share the then widely-prevalent notion that apprenticeship is a mere farce. Later I was one day dumbfounded when I noticed that he could tell even the portion of a page in the I.L.R., (Madras series) and in the M.L.J. reports, where I could find observations, *obiter* in nature, of this or that learned Judge, that could be used in bettering a bad case. I remember the flutter, caused in the dovecotes of the subordinate judiciary, when Sri Somayya, in the course of his judgment in *Raghava Mannadiar* v. *Theyyunni Mannadiar*,[1] pointed out that there is a duty cast upon the members of the judiciary to keep themselves informed of the current decisions of at least our High Court. One would, on such occasions as that, be wondering if he was the same simple and genial Somayya that he was in private life. He was *fortiter in re suaviter in modo*, even while he was judge, as he was in private life. He belonged to a generation of lawyers, that is fast fading out, that pinned its faith on learning and on industry for ascending the legal profession's ladder.

Competent observers, like Sri Alladi Krishnaswami Aiyar, were not niggardly in their praise of Sri Somayya's great power of comprehension, and unique mastery of details, the wood not being lost among the trees, mental qualities, which in combination with his learning, experience of life, and amiable character had raised his stature to heights in the hearts and in the estimation of the members of the Bar, of the Bench, and of the public alike. When after retirement from the Bench, he decided to re-enter the lawyers' arena as Senior Advocate of the Supreme Court, it was like home-coming. He enjoyed both the fight and the fun of this fresh forensic life, but alas his not-too-good health had often drawn its door across him.

As a Judge, it may be said, without fear of contradiction, that he lives in the pages of the law reports both official and non-official. Sri Pappu Somasundaram in bidding farewell to him on the 6th day of August, 1946, at the Madras High Court Advocates' Association adverted to Sri Somayya's contribution to the enrichment of Hindu Law, and Land Tenures in particular. One may re-read several times with increasing profits, his judgment in *Subbaramayya* v. *Venkatasubbamma*,[2] where his Lordship reviewed all the Sanskrit texts, and authorities, on the question of *Anuloma* marriages, argued before him by very eminent counsel on both sides. His masterly treatment of another topic of Hindu Law in *Seshamma* v. *Venkatanarasimha Rao*,[3] arrests our attention. On the question whether a Hindu widow was under a necessity to consult her daughter's son, in addition to a divided agnate of her husband, for a valid adoption of a son to her husband, his Lordship discussed the text of Sri Vasishta, "Nor let a woman give or accept a son, unless with the assent of her Lord", as well as the text of Yagnavalkya, restricting the independence of a Hindu woman. Recalling the *Ramnad case*,[4] Sri Somayya authoritatively opined that the Smrithis and the commentators had not given any lead as to who all should be consulted by a Hindu widow in the absence of her husband's authority. Space forbids reference to other judgments, bespeaking his vast erudition, foreshadowed even at the Law College, when he secured the Sir V. Bhashyam Iyengar Gold Medal for proficiency in Hindu Law.

1. (1946) 2 M.L.J. 117.
2. (1941) 1 M.L.J. 724.
3. (1940) 1 M.L.J. 400 (F.B.).
4. 12 M.I.A. (1868) 397.

Style, polish or grandiloquence could not be expected from Sri Somayya, the core of whose interest lay in bending every fibre of a case to do justice or equity in the widest sense, if necessary, by annihilating technicalities and the rigours of a statute like the Indian Limitation Act, which came in the way. Posterity will not judge amiss a Judge, who does not leave behind him studded learning either in dusty Law Reports or in bulky text books, but it is sure to weep over, nay, may even curse, as has Lord Birkenhead done in his "Fourteen English Judges", a judge, like Lord Chancellor Bacon of the time of Queen Elizabeth I, who fails to be a Judge in its widest import, but vainly erects a niche in the Hall of Fame, by mere bookish learning.

May be the lamp was broken on the 8th day of this month at New Delhi. But the light continues to shine, and it will ever shine.

A CRITICAL NOTE ON ORDER 21, RULE 89, OF THE CODE OF CIVIL PROCEDURE (MADRAS AMENDMENT)

By

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In a case where there are several judgment-debtors and the property of one of them is sold in Court-auction, an interesting question of law arises 'whether any of the other judgment-debtors having no interest in the property sold, could apply under the above rule to set aside the sale'?

The Madras amendment is the belated outcome of conflicting precedents, but apparently the framers of the rule in 1936 did not see the necessity to make it more explicit in the conviction that the answer to the above question admits of no doubt, when the rule is read as a whole. The rule reads "where immovable property has been sold in execution of a decree, the judgment-debtor or any person deriving title from the judgment-debtor, or any person holding an interest in the property, may apply to have the sale set aside, etc....."

It would appear that the *sine qua non* for competency to apply is that the person so applying must have an interest in the property sold. That it must be so would also be easily seen by tracing the history of the rule.

Before the amendment of the Code in 1908, under section 310-A of the old Code "any person whose immovable property has been sold under this Chapter" might apply to have the sale set aside. Apart from judicial interpretation of the above section in its other ramifications, it confined the remedy only to such persons as had any interest in the property sold. A straight answer to our question has been given in the negative in *Ram Singh* v. *Salig Ram*[1] according to the section as it then stood.

But judicial interpretations of the section varied from Court to Court, beside being contradictory in the same Court, as regards the questions whether a purchaser from the judgment-debtor before the execution sale but subsequent to attachment and a purchaser after the execution sale, were competent to apply under the section. Vide *Srinivasa Ayyangar* v. *Ayyathorai Pillai*[2], *Ramachandra* v. *Rakhmga Bai*[3], *Arjan Mollah* v. *Jadunath Roy Chowdhry*[4], *Appayya Shetti* v. *Kunhati Beari*[5] and *Kallar Singh* v. *Moril Mahton*[6].

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1. (1905) I.L.R. 28 All. 84.
2. (1898) I.L.R. 21 Mad. 416 : 8 M.L.J. 54.
3. (1899) I.L.R. 23 Bom. 450.
4. (1902) 7 C.W.N. 243.
5. (1907) I.L.R. 30 Mad. 214 : 17 M.L.J. 127.
6. (1895) 1 C.W.N. 24.

The conflict was sought to be set at rest by the amendment in 1908, recasting the old section into the present rule (Central Act). But the new rule gave rise to fresh problems, though no doubt, as regards our present question the rule is quite clear. Only persons who own the property or hold an interest by virtue of a title acquired before such Court sale can apply to set aside the sale. The conflict veered round questions such as : (1) Did the judgment-debtor, after a private sale by him to a third party after the Court auction, own the property to enable him to apply ? (2) Did the private purchaser after such Court sale own the property ? (3) Did the phrase " holding an interest " limit itself to persons owning an inferior right in the property than one of absolute ownership ? (4) Did the words " by virtue of a title acquired before such Court sale " qualify only the owners of such lesser rights ? (5) Could there be two owners of the same property so as to clothe both the judgment-debtor and his vendee to separately apply under the rule ? It will be useful in this connection to refer to the decision in *Sundaram* v. *Mamsa Mavuthar*[1] which has discussed the several conflicting decisions before it, and has answered the questions in one way, after overruling certain decisions of its Court. It held that the purchaser from the judgment-debtor subsequent to the Court sale is not entitled to apply ; and fifteen years passed before the present Madras amendment did away with all the problems raised *supra*.

It will now be seen that the introduction of the words " the judgment-debtor " which did not and do not find a place in the Central enactments has given rise to a fresh problem. It might be urged with plausible force that the definite article " the " before the word "judgment-debtor" and the subsequent category of persons " or any person deriving title from the judgment-debtor" following "judgment-debtor" ruled out any interpretation seeking to bring in any *other* judgment-debtor, who has no interest in the property sold. But yet a liberal interpretation, not to speak of a literal one, peculiar to legal casuistry, may lend weight to an affirmative answer to our question, running contrary to the spirit of the rule as it has been understood over the years and serve as a justifiable quip to the wag " that law is not logic."

Would it not therefore be advisable, to add the words " whose property has been sold " after the word "judgment-debtor" in the Madras Rule ?

[End of Volume (1955) 2 M.L.J. (Journal.).]

1. (1921) I.L.R. 44 Mad. 554 : 40 M.L.J. 497 (F.B.).